

Speech: Beyond prison, redefining punishment: David Gauke speech

Since the early 1990s, we've seen the prison population almost double, from about 45,000 in 1993 to just over 83,000 in 2008. Since then, it has been broadly stable and currently stands at a little below 83,000.

This is the highest rate of imprisonment almost anywhere in western Europe.

For every 100,000 people...

... in the Netherlands 61 are behind bars

... in Denmark 63

...in Germany it's 76

...in Italy it's 99

and

...in France it's 104.

In England and Wales our incarceration rate is 139 people per 100,000.

Why do we have such high rates of imprisonment – both by international standards and our own historic standards?

Part of this is about our society and government rightly recognising and responding to the rise in certain types of crime.

More offenders are being jailed for violent crime for example. And last year, over a third of people sentenced for crimes involving knives or other weapons were given immediate custodial sentences. That's up from 23% in 2009.

And the length of sentences is increasing – sentences for sexual offences for example have gone up from 43 months in 2007 to just under 61 months in 2018.

It's also about changing expectations about the kinds of crimes for which we expect perpetrators to be more severely punished.

Look at sexual offences where we've seen more victims feel able to come forward, more people brought to justice, and with many more convictions and much longer sentences than a decade ago.

But it's not just about violent or sexual offences. Prison sentences, in general, have been getting longer.

Even for offences which aren't violent or sexual, the average sentence length overall has increased. Take fraud: the average custodial sentence for that has gone up from just under a year in 2007 to over 18 months in 2017.

Now, whatever your own views on what should happen, as a matter of fact it is clearly not true that sentences overall are getting shorter or justice is somehow getting softer – as some argue.

When it comes to the length of prison sentences we are now taking a more punitive approach than at any point during Mrs Thatcher's premiership.

Let me be clear...

...I do not want to reverse the tougher sentencing approach for serious offences. But equally, we should be extremely cautious about continuing to increase sentences as a routine response to concerns over crime. We have to recognise that such an approach would lead us to becoming even more of an international and historical outlier in terms of our prison population.

Instead, we need to take a step back and to ask ourselves 3 questions:

...Is our approach to sentencing actually reducing crime – when reoffending remains stubbornly high, creating more victims and putting the public at risk?

...Are we running our prisons in a way which maximises offenders' chances of turning their lives around, of going on to gainful employment and re-joining society as a responsible citizen?

...And should we be seeking opportunities in the coming years to find better and alternative ways of punishing as well as rehabilitating offenders?

It is these questions – how we punish people for their crimes – which I'd like to talk about today (18 February 2019).

I think now is the time for us as a society, as a country, to start a fresh conversation, a national debate about what justice, including punishment, should look like for our modern times.

Because as I see it, there is a false choice between the narrow and often polarising discussion about 'soft' justice versus 'hard' justice.

In my view, we should be talking about 'smart' justice.

Justice that works.

Now, for most of us in society, the very idea of going to prison for even a short amount of time, and the loss of liberty that entails, is a real deterrent.

But that thinking fails to get into the mindset of many of today's criminals – who are either reckless, or who don't fear prison because they have friends and family who have all done time. Perhaps their lives are so chaotic that prison, in the scheme of things, might not seem so bad.

That is true of no group more than those serving the shortest sentences.

In the last five years, just over a quarter of a million custodial sentences have been given to offenders for six months or less; over 300,000 sentences were for 12 months or less.

But nearly two thirds of those offenders go on to commit a further crime within a year of being released.

27% of all reoffending is committed by people who have served short sentences of 12 months or less.

For the offenders completing these short sentences whose lives are destabilised, and for society which incurs a heavy financial and social cost, prison simply isn't working.

The most common offence for which offenders are sentenced to less 6 months – some 11,500 offenders – is shoplifting.

We know that offenders who commit this kind of crime often have drug or alcohol problems, and many are women. Almost half of women sentenced to a short custodial sentence are there for shop theft.

The impact of short custodial sentences on women generally is particularly significant. Many are victims, as well as offenders, with almost 60% reporting experience of domestic abuse and many have mental health issues.

For women, going into custody often causes huge disruption to the lives of their families, especially dependent children, increasing the risk they will also fall into offending.

And for many offenders, both men and women, who may not have a stable job or home, and who are likely to have alcohol or drug problems, a short stay in prison can result in them losing access to benefits and drug or alcohol support services and treatment. Coming out of prison, they find themselves back at the start of the process and feeling like they have even less to lose.

That's why there is a very strong case to abolish sentences of six months or less altogether, with some closely defined exceptions, and put in their place, a robust community order regime.

Let's be honest. The public will always want to prioritise schools or hospitals over the criminal justice system when it comes to public spending. But where we do spend on the criminal justice system, we must spend on what works.

Why would we spend taxpayers' money doing what we know doesn't work, and indeed, that makes us less safe?

We shouldn't.

The reception of a new offender into custody – that first night inside – is one of the most resource heavy moments in an offender's journey through the system.

Every offender must have their property logged. They must be issued with their prison essentials – toothbrushes; clothing; bedding. They must be risk assessed for self-harm risks and the risks they pose to other offenders. There are full security procedures including a strip search for many.

And then once these offenders are set up inside, there's no time for the prison service to do any meaningful rehabilitative work with them.

In 2017, almost 50,000 offenders were sentenced to immediate custody for 6 months or less. By abolishing these sentences we'd expect also to reduce the number of receptions carried out.

Just think how much better we could use the prison officers' time and resources, whether focusing on security, whether looking after those at risk of self harm, or whether spending more time on running regimes which really will make a difference – those built around temporary release for work, education, and tackling drug addiction.

And offenders are less likely to reoffend if they are given a community order, which are much more effective at tackling the root causes behind criminality.

Now, I do not want community orders which are in any sense a 'soft option'. I want a regime that can impose greater restrictions on people's movements and lifestyle and stricter requirements in terms of accessing treatment and support.

And critically, these sentences must be enforced.

That's why on Saturday I announced the rollout of our new GPS tagging programme which will allow offenders' movements to be more effectively monitored.

Working with our justice partners, I hope that GPS tags will be available across the country by April.

It will be an important new tool in controlling and restricting the movement and certain activities of offenders.

It will also help manage offenders safely in the community and strengthen the protection available for victims by monitoring exclusion zones.

Other new technology and innovations are opening up the possibility of even more options for the future too.

For example, technology can monitor whether an offender has consumed alcohol, and enables us to be able to better restrict and monitor alcohol consumption where it drives offending behaviour.

We are testing the value of alcohol abstinence monitoring requirements for offenders on licence, building on earlier testing of its value as part of a community order.

Underpinned by evidence of what works to reduce reoffending, we are also increasing the treatment requirements of community orders.

Our research shows that nearly 60% of recent offenders who engaged with a community-based alcohol programme did not go on to reoffend in the two years following treatment. Offenders given a community sentence including mental health treatment have also shown to be significantly less likely to reoffend.

That's why we have worked with the Department of Health and Social Care, NHS England and Public Health England to develop a Treatment Requirement Programme which aims to increase the number of community sentences with mental health, drug and alcohol treatment requirements.

The programme is currently being tested in courts across five areas in England –Milton Keynes, Northampton, Birmingham, Plymouth and Sefton.

It dictates a new minimum standard of service, with additional training for staff to improve collaboration between the agencies involved – all of which is increasing confidence among sentencers to use them.

I look forward to seeing the outcomes of those trials shortly.

Many offenders in prison have mental health problems, but often struggle to engage with treatment on the same terms as they could in the community. That is why the Health Secretary and I want to explore how innovative digital technologies can be put to use to serve the mental health needs of our prisoners.

We also know stable accommodation is a key factor in reoffending. As part of the Government's Rough Sleeping agenda, we are investing up to £6.4 million in a pilot scheme to help individuals released from three prisons – Bristol, Leeds and Pentonville – who have been identified as being at risk of homelessness into settled accommodation, while providing them with wrap around support for up to two years.

This is part of a cross-government action necessary to cutting reoffending and tackle the root causes of criminality.

But if we want to successfully make a shift from prison to community sentences it is critical that we have a probation system that commands the confidence of the courts and the public.

I will return to the subject of probation in much greater depth later this year. But, in thinking strategically about the future of our justice system I believe in the end there is a strong case for switching resource away from ineffective prison sentences and into probation. This is more likely to reduce reoffending and, ultimately, reduce pressures on our criminal justice system.

I am determined to strengthen the confidence courts have in probation to ensure we can make this shift away from short custodial sentences towards more punitive and effective sanctions and support in the community.

However, as I mentioned earlier, prison will continue to be right for some.

My second question was about what sort of prison regime we want.

For those who are serving longer sentences, we need to ensure that prisons are humane, safe and secure. Much good work has been done over the past year, led by the excellent Prisons Minister Rory Stewart.

But in prison, to reduce the chances of reoffending on release, there needs to be a positive outlook for the future and a sense that there is light at the end of the tunnel so long as an offender wants to turn their back on crime.

That's why I have spoken before and we have consulted on a new approach to incentives and privileges that better incentivises prisoners to abide by the rules and engage in education, work and substance misuse interventions, whilst ensuring poor behaviour can still be tackled through the loss of privileges.

It means maintaining a link to the outside world – for example with work and family – so that prisoners don't get institutionalised and lose hope.

If, at the end of a prison term, our objective is to release into the community a responsible citizen, we must first ensure that we have a responsible prisoner.

An important way we can do this for some prisoners is release on temporary license – or ROTL.

Research last year shows the more ROTL a prisoner gets, the less chance there is of them reoffending.

It provides purposeful activity and experience while in prison so that they have the right attitude for work, can get a job when they're released, prepare for re-joining their families and society and turn their back on crime for good.

We are currently consulting on loosening some of the barriers to using ROTL for some prisoners. Our plans will encourage using ROTL more often to get prisoners off the wings and into the workplace by removing blanket restrictions on when governors can consider ROTL, particularly those who have progressed to open conditions.

Rather than blanket bans, the focus will rightly be instead on how safe it is for a prisoner to be released on ROTL, enabling them to go out to work sooner, and helping them to prepare for eventual release.

I am pleased to say that three prisons, HMPs Drake Hall, Ford and Kirkham, are currently testing out new arrangements for ROTL, giving their Governors more discretion over temporary release for men and women. This will be a great opportunity to learn from their experience, and explore the best ways to safely and more quickly get prisoners out for work.

Our other reforms will also make reoffending less likely on release. Whether that's our £7 million investment for new in-cell telephones to maintain family links or looking at how we categorise the risk prisoners pose so they are put in the right type of category prison.

This brings me to my third fundamental question. Is it time to begin to think again about how we punish offenders in future.

Historically, for many offenders our earliest prisons were little more than holding pens ahead of transportation or indeed capital punishment. Of course, those sanctions are no longer available to us. And, for the avoidance of doubt, I am not advocating their return.

But for the past couple of centuries, we have – almost by default – come to accept the view that punishment essentially means prison.

Looking at reforming short sentences by providing a robust community orders regime is a near term initiative that will help us tackle the problem of reoffending.

But thinking about effective punishment for different crimes isn't limited to those that currently get short sentences.

I believe we are nearing a time when a combination of technology and radical thinking will make it possible for much more intensive and restrictive conditions to be applied in more creative and fundamental ways outside of prison.

I think for some offenders we need to revisit what effective punishment really means.

Home curfew, driving bans, alcohol bans and foreign travel bans are just some of the options that already exist and which might play a bigger role.

I believe the biggest potential comes from being able to better target someone who makes large profits from committing a financial crime like fraud. Or the kingpin drug baron who makes his money one step removed from the violence and misery this illicit trade creates.

Fraud, for example, is a serious offence. It is far from victimless and the consequences for innocent people can be devastating. So, it needs a serious punishment.

And the criminals who commit these offences are calculating. They are premeditated. And they are motivated by greed.

In recent years, the custody rate has increased from 14.5% in 2007 to over 20%, and the average custodial sentence going up from under a year to over 18 months. But once fraudsters have sat out their sentence, they may be able to return to their comfortable lifestyle as soon as they get out.

Indeed, serving a 2 year prison sentence but knowing your illicit cash is still hidden from the authorities, is not an effective punishment.

I can see us being able to take a different approach. For example, this kind of fraudster or kingpin would still need to spend time in prison. And we will continue to pursue relentlessly to confiscate the proceeds of crime.

But we could go further. I want to look at what happens after prison – whether our more effective punishment and deterrent for these criminals might involve jail time and more lasting and punitive community interventions.

After serving part of their sentence behind bars, we could, for example, continue to restrict an offender's movement, their activities and their lifestyle beyond prison in a much more intensive way.

And that could also mean a real shift in the standard of living a wealthy criminal can expect after prison.

I want to look at how, once a jail term has been served, we can continue to restrict their expenditure and monitor their earnings, using new technology to enable proper enforcement.

They would be in no uncertainty that, once sentenced, they wouldn't be able to reap any lifestyle benefits from their crimes and would need to make full reparation to the community as part of the sentence.

I'm keen to get industry working with us to develop the necessary technology. Our banks are looking more and more at their social responsibilities, and they could look at what part they can play in investing to help us to deliver this vision.

Community sanctions like this won't be soft options, but they will be smart ones.

They will enable us to impose an unprecedented level of punitive sanctions outside of a prison, with punishment hitting closer to home and hitting criminals where it always hurts – the pocket.

It will allow us not only, as the old adage goes, to 'let the punishment fit the crime', but to let the punishment properly hit the criminal in a more tailored and targeted way outside of prison.

Prison will always play a part in serving as punishment for serious crimes and in rehabilitation, and our reforms will deliver that. But we need to think more imaginatively about different and more modern forms of punishment in the community. Punishments that are punitive, for a purpose.

As with our approach to short sentences, ultimately, it's about doing what works to reduce reoffending and make us all safer and less likely to be a future victim of crime.

In that sense, I believe the choice – and the debate – isn't one of soft justice or hard justice. It's a choice between effective justice or ineffective justice.

I know that there will be some who argue that the only problem with our

criminal justice system is that it isn't tough enough, that the answer to short sentences is longer sentences, that the best way of stopping recently released prisoners from reoffending is not to release them. And that the endless ratchet effect of higher sentences is giving the public what it wants.

But I believe that those in positions of responsibility have a duty to show leadership. To confront difficult issues, be led by the evidence and pursue policies that are most likely to deliver for the public.

That, I hope, is the approach I have set out today – thank you.

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